

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA AUSBORN,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE NO.
)	
ILLINOIS UNION INSURANCE)	_____
COMPANY D/B/A CHUBB,)	
)	
Defendant.)	
)	

NOTICE OF REMOVAL

COMES NOW Illinois Union Insurance Company (“Illinois Union”), improperly named “Illinois Union Insurance Company d/b/a Chubb,” by and through its undersigned counsel, and files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, showing this Court as follows:

1.

Illinois Union is a defendant in a civil action filed in the State Court of Gwinnett County, State of Georgia, Civil Action File Number 23-C-03772-S2. This Notice of Removal is filed with the United States District Court for the Northern District of Georgia, Atlanta Division, within thirty (30) days of service upon Illinois Union of the initial pleading.

2.

Illinois Union attaches hereto as Exhibit "A" a true and correct copy of all of the process, pleadings (as defined by Federal Rule of Civil Procedure 7), and orders served on Illinois Union in this action to date, as required by 28 U.S.C. § 1446(a).

3.

The United States District Court for the Northern District of Georgia, Atlanta Division, is the district court having jurisdiction over the place where the state action is pending pursuant to 28 U.S.C. § 90(a)(2).

4.

A copy of this Notice of Removal has been filed with the Clerk of the State Court of Gwinnett County, State of Georgia, as required by 28 U.S.C. § 1446(d).

DIVERSITY OF JURISDICTION

5.

Removal in this case is proper pursuant to 28 U.S.C. § 1332(a)(1).

6.

Plaintiff Donna Ausborn is a citizen of the state of Georgia.

7.

Defendant Illinois Union is a foreign corporation organized and existing under the laws of the State of Illinois with its principal place of business in Philadelphia, Pennsylvania. Therefore, Illinois Union is a citizen of Illinois and Pennsylvania.

8.

This controversy is, therefore, between citizens of different states pursuant to 28 U.S.C. §§ 1332(a)(1) and 1332(c)(1).

9.

Although 28 U.S.C. § 1332(c)(1) contains an exception for a direct action against the insurer of a policy or contract of liability insurance, this exception does not apply to post-judgment proceedings brought to collect a judgment entered against the insured. *Merritt v. Campana Technology, Inc.*, 2008 WL 11334398, at *2 (N.D. Ga. Oct. 28, 2008) (holding that garnishment actions brought by third parties against insurers are removable under 28 U.S.C. § 1332 when diversity of citizenship exists between the plaintiff and the insurer, and citing *Butler v. Polk*, 592 F.2d 1293, 1295 (5th Cir. 1979) for the proposition that “garnishment actions brought post-judgment to collect a judgment are separate civil actions that are removable”).

10.

Plaintiff Ausborn has brought this lawsuit to collect a judgment entered against Illinois Union's insured, the City of East Point, Georgia. (Complaint, ¶ 8). Therefore, the exception to 28 U.S.C. § 1332(c)(1) is inapplicable, and diversity jurisdiction is established solely by the citizenship of Plaintiff Ausborn and Defendant Illinois Union. *See Merritt*, 2008 WL 11334398, at *2.

11.

In her complaint, Plaintiff Ausborn alleges that she obtained a \$7 million judgment for wrongful death against three employees of the City of East Point, who were insured by Illinois Union. (Complaint, ¶ 5).

12.

In this action, Plaintiff Ausborn seeks to collect the \$7 million judgment from Defendant Illinois Union. Complaint, ¶¶ 8-9.

13.

The amount in controversy therefore exceeds the sum or value of \$75,000.00, exclusive of interest and costs pursuant to 28 U.S.C. § 1332(a).

14.

WHEREFORE, Defendant Illinois Union prays that this Notice of Removal be filed and this action be removed to proceed in this Court and that no further proceedings be had in the State Court of Gwinnett County.

This 30th day of June, 2023.

/s/ Alycen A. Moss _____

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2023, I electronically filed the foregoing ***NOTICE OF REMOVAL*** with the Clerk of Court using the CM/ECF system. A copy of this filing is also being served upon all counsel by placing a true and correct copy in the United States Mail, addressed as follows:

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/s/ Alycen A. Moss

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